S. 2(28) Interest post securitisation

Interest is in respect of any moneys borrowed or debt incurred. The loan portfolio was sold by the assessee to the SPV and therefore is no longer a lender for the customers. Loan ceases to exist in the audited accounts of the assessee on the date when securitization agreement is entered into by the assessee. The excess interest spread (EIS) receivable by the assessee is thus, a contractual receipt and not an interest receipt, since the relationship of the assessee with the borrowers ceases to exist once the loan is sold to the SPV whereby "moneys borrowed or debt incurred" no longer remain its books. Accordingly, once the EIS is not in the nature of "interest" as defined u/s 2(28) of the Act, ICDS-IV has no application. Tax treatment of such income in the form of EIS is governed by the general principles under the head business income as and when received by the assessee which is accounted in accordance with the RBI Circulars for which a proper disclosure has been made in the notes to audited financial statements Poonawalla Fincorp Ltd. v. PCIT [2022] 142 taxmann.com 530 (Kolkata - Trib.)

S. 10(38), 45 Gains on Penny Stock

The presumption drawn by the Revenue that merely because a particular company at a particular point of time is not doing well and hence, it necessarily is a sham company is an argument without any basis. The fact remains that the said company is still listed on the Stock Exchange is a fact on record. Many of today's bluechip multibaggers were 'penny stocks' ago.

By accepting an estimated addition the broker cleverly evades penal consequences of Detection and discovery of client fund mis-management. These statements of surrender by Brokers it cannot be over emphasized should be treated with utmost caution in the interests of the economic activity in the country and as a safeguard to the trusting citizens who engage and pay for the services of these Brokers. These surrenders consciously and unscrupulously made invite whimsical consequences for the bonafide investors. How and why the tax department should accept the words of such a manipulative fast thinking person and why the words of such a manipulative person be permitted to be given a precedence over the documents and evidences relied upon by a person relying in good faith on the bonafide of his Broker needs to be seriously introspected upon and addressed by the tax authorities. Permitting such criminal acts by carelessly accepting the statements/ surrenders made by unscrupulous brokers needs to be addressed consciously especially when applied to the clients of such brokers who may have trusted the financial acumen of these brokers. These innocent trusting lambs should not be carelessly allowed to be thrown at the wolves by the manipulative brokers. These surrender statements should be viewed with due care and caution. It is necessary for the tax authorities to examine whether the traded company has actually been barred from the Stock Exchange or was still continuing on the Stock Exchange. For the sake of removing doubts, it is being clarified that the observations are made to the transaction of buy/sale through the D-Mat account on the Stock Exchange in listed companies. Accordingly it was observed that genuine sales of penny stocks on Stock Exchange through d-mat account cannot be denied tax reliefs applicable to capital gains/loss merely based on suspicions of rigging of price and on the assumption that investee company is a sham when no wrongdoing has been found by SEBI and accordingly the Revisionary order in the peculiar facts and circumstances proceeds entirely on presumptions, conjectures and surmises. Trivikram Singh Toor v. PCIT [2022] 142 taxmann.com 493 (Chandigarh - Trib.)

S. 28, 45 Business income v/s Capital Gains on Share transaction

The assessee has consistently disclosed/reported her holdings in shares/mutual funds in the balance sheet under the head investments which manifests the intention of being an investor. The same have been reported in the income-tax return form consistently under the head investments and not under the head current assets. Also the revenue has not disturbed the status declared by the assessee and accepted the returns u/s 143(3) of the Act, for which the details have been tabulated above and it is evidently oozing out that in the earlier years as well as subsequent years, the status of the assessee as investor was not disputed except for the impugned year and AY 2012-13 pending before the ld. CIT(A). Revenue could not bring on record any material to demonstrate change in facts and applicable law in the year under consideration when compared with the preceding as well as subsequent years referred in the table above and therefore the rule of consistency is to be followed. We note that assessee has purchased the shares on delivery basis. Though the volume of transactions is high and certain borrowed funds have also been deployed but considering the judicial precedents referred above including that of Hon'ble jurisdictional High Court carrying force of binding nature, ITAT held that mere volume of transactions and utilization of borrowed funds are not the criterion to alter the treatment given by the assessee about her investment in the books. i.e. to treat the income earned

by the assessee on share/mutual funds transactions under the head capital gains by considering the assessee as an investor, whether short-term or long-term capital gains, depending upon the period of holdings of the relevant shares/mutual fund units. Smt. Yamini Khandelwal v. ACIT [2022] 142 taxmann.com 529 (Kolkata - Trib.)

S. 36(1)(vii), 36(2), 37 Bad debts

it is held that the assessee's claim for as a bad and doubtful debt could not have been allowed if the assessee does not prove to the AO that the case satisfies the ingredients of Section 36(1)(vii) as well as section 36(2) of the Act.

The opinion that as a proposition of law, that enunciation is unexceptional, since the heads of expenditure that can be claimed as deduction are not exhaustive - which is the precise reason for the existence of Section 37. Therefore, if the expenditure relates to business, and the claim for its treatment under other provisions are unsuccessful, application of section 37 is per se not excluded. PCIT v. Khyati Realtors (P.) Ltd. [2022] 141 taxmann.com 461 (SC)

S. 43B, 145 Disallwanaces of unpaid taxes not debited to profit & Loss Account

There is no dispute that the assessee has not paid the GST within the time limit as prescribed under section 43B and shown in the Balance-Sheet as outstanding. The only contention of the assessee is that it has not debited this amount in the profit and loss account but directly taken to the balance-sheet. This modus operandi of the assessee is not acceptable as the GST is part and partial of the sales and turnover of the assessee and it has to be shown as part of the inventory / closing stock. The assessee is required to maintain the books of accounts as per the accounting standards which are notified in the official gazette from time to time as per section 145 of the Act. The method of accounting is required to be regularly followed by the assessee. Even as per the provisions of section 145A, the valuation of the purchase and sales of goods and services and sale of inventory shall be adjusted to include the amount of duty, cess or fee actually paid or incurred by the assessee. Hence, the contention of the assessee that it has not claimed any deduction on account of GST by taking the same directly to the balance-sheet and not taking through the profit and loss account is not acceptable. The assessee cannot be permitted to adopt a modus operandi and giving an accounting treatment to the GST without passing through the profit and loss account to circumvent the provisions of section 43B. Smt. Husna Parveen v. CIT(A), NFAC, [2022] 142 taxmann.com 2 (Varanasi-Trib)

S. 139 Filing revised to rectify section under which claim was made

Here is a case in which a claim for exemption was rightly made, but only a wrong section was quoted while making a claim, which is qualitatively different from was no fresh claim was such. Accoordingly it was observed that the Assessing Officer was indeed in error in adopting such a hyper-pedantic approach and in holding that there was a fresh claim for exemption under section 54F. The grievance raised by the Assessing Officer, in the appeal, is, therefore, devoid of any legally sustainable merits. It proceeds on the fallacious assumption that a change of section, on account of an inadvertent and bonafide error, under which the claim is made, by itself, amounts to a fresh claim. Accordingly it was held that the filing of revised return is not required to correct the error of quoting wrong section in ITR in respect of deduction claim. ITO v. Armine Hamied Khan [2022] 142 taxmann.com 14 (Mumbai - Trib.)

S. 143(1) Suo-moto Adjustment based on Audit report

What a tax auditor states in his report are his opinion and his opinion cannot bind the auditee at all. Observation in audit report does not automatically calls for the dis-allowances. That is where the quasi-judicial exercise of dealing with the objections of the assessee, against proposed adjustments under section 143(1), assumes critical importance in the processing of returns. It is also important to bear in mind the fact that what constitutes jurisdictional High Court will essentially depend upon the location of the jurisdictional Assessing Officer. While dealing with jurisdiction for the appeals, Rule 11(i) of the Central Processing of Returns Scheme 2011 states that "Where a return is processed at the Centre, the appeal proceedings relating to the processing of the return shall lie with Commissioner of Income-tax (Appeals) [CIT(A)] having jurisdiction over the jurisdictional Assessing Officer". Then situs of the CPC or the Assessing Office CPC is thus irrelevant for the purpose of ascertaining the jurisdictional High Court. Therefore, in the present case, whether the CPC is within the jurisdiction of Hon'ble Bombay High Court or not, as long as the regular Assessing Officer of the assessee and the assessee are located in the jurisdiction of Hon'ble Bombay High Court, the jurisdictional High Court, for all matters pertaining to the assessee, will be Hon'ble Bombay High Court. In our considered view, it cannot be open to the Assessing Officer CPC to take a view contrary to the view taken by the Hon'ble jurisdictional High Court- more so when his attention was specifically invited to the binding judicial precedents in this regard. For this reason also, the inputs in question in the tax audit report can not be reason enough to make the impugned disallowance. Jasbir Singh Kaberwal v. ADIT [2022] 142 taxmann.com 97 (Mumbai - Trib.)

Similar view has also been given in K A Hospitality (P.) Ltd. v. ITD [2022] 141 taxmann.com 440 (Mumbai - Trib.), Mehra Eyetech (P.) Ltd. v. ACIT [2022] 141 taxmann.com 470 (Mumbai - Trib.)

S. 151 Satisfaction before issue of reassessment notice

There was no valid satisfaction recorded by the by the Prescribed Authority under section 151 of the Act, 1961 when the Assessing Officer issued notice to the assessees under section 148 of the Act, 1961. At the time when the notice under section 148 of the Act, 1961was issued by the Assessing Officer to the petitioner there was no valid satisfaction recorded by the Prescribed Authority i.e. the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Subsequent to issuance of the notice under section 148 of the Act, 1961 by the Assessing Officer, the satisfaction under section 151 was digitally signed by the Prescribed Authority. Therefore, the point of time when the Assessing Officer issued notices under section 148, he was having no jurisdiction to issue the impugned notices under section 148 of the Act, 1961. Consequently the impugned notices issued by the Assessing Officer under section 148 of the Act, 1961 were without jurisdiction. Vikas Gupta v. UOI [2022] 142 taxmann.com 253 (Allahabad)

S. 48 Fair market value of shares of private company

The shares were acquired before 1st April 1981 and that the assessee had the option to substitute its cost of acquisition by the fair market value as on 1st April 1981. The assessee has filed a Government Approved Valuer report evidencing its fair market value of the land held by the SCPL, and, taking into account the same, computation of the fair market value as on 1st April 1981 on the basis of the intrinsic value of the SCPL shares. The intrinsic value of shares, particularly in the case of the closely held private limited companies, is, in our considered view, a reasonable method of ascertaining the fair market value of the shares. The mere fact that the shares were issued after 1st April 1981 also at face value cannot negate its fair market value. When shares are issued by a company at face value, it does essentially imply that the market value of shares already issued does not exceed the face value of these shares; the reasoning adopted by the Assessing Officer is simply fallacious and proceeds on the unrealistic assumption that the issue price of the shares reflects their fair market value.

Section 2 (22B) does define the expression "fair market value" in relation to a capital asset, as "(i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act", it does not really require an actual price at which such an asset is sold, but it would also include a hypothetical price which such a capital asset would fairly fetch in an open market.

The shares of a private limited company are not sold in an open market, and, therefore, when computing such a price under section 2(22B), one has to proceed on the basis that if the shares of the private limited company are to be sold in an open market. As to what would have been a fair price for such shares, particularly in a closely held private company in which the fair market value of land is more than 90% of the entire fair market value of the net assets of the company, in our considered view, the intrinsic value of the shares on the basis of net assets divided by the total number of equity shares is most appropriate.

As to what is the most appropriate method of ascertaining the fair market value of shares in a private limited company would vary from case to case, but given the fact that the most important asset held by this company, as a perusal of the valuation report read with the balance sheet- copies of which is placed before us in the paper book, is land, and the value of this asset is a dominant factor in the valuation of the entire company, the course adopted by the assessee does appeal to us.

The provisions of Rule 1D, so much relied upon by the learned CIT(A), were no longer in existence at the relevant point of time, and nothing, therefore, turns on the same, nor can these provisions, therefore, be pressed into service as of now. No doubt, the provisions of rule 1D of the Wealth Tax Rules could, at best, be of good guidance, but that is still a step short of the legal force. In any event, if the Assessing Officer had any doubts on the correctness of valuation, it was open for him to refer the matter to the Departmental Valuation Officer, but that exercise has not been done, and the relevant financial period is more than a decade old. No other issues are raised by the authorities below with respect to the method adopted for the valuation of shares in question. In view of these discussions, and on the peculiar facts of this case, we uphold the plea of the assessee, and direct the Assessing Officer to adopt the valuation computed by the assessee on the basis of the fair market value of the net assets. Sushiladevi R Somani v. ACIT [2022] 142 taxmann.com 123 (Mumbai - Trib.)